

Executive Summary

Acute Inpatient Obstetric Services

Recommendation 1.0

The Commission should continue its regulatory oversight of acute inpatient obstetric services through the Certificate of Need program.

Recommendation 1.1

The Commission should modify the need projection, review threshold, and approval policies found in the State Health Plan to permit its consideration of proposed new obstetric services.

The Commission recommends retaining the current statutory and regulatory framework for the consideration of proposed new acute inpatient obstetric units, with a significant change in the way the State Health Plan's need projection methodology is applied in CON review. The Commission recommends changing the State Health Plan to remove the threshold need requirement, to make it possible for the Commission to consider the merits of proposals to develop new obstetric services. If the Commission changes how it uses the projection of obstetric bed need in each jurisdiction—from a barrier to considering a new program at a hospital, to one of many factors used in the analysis of such a proposal—then the existing CON procedures provide two appropriate and well-established pathways through which to accomplish the review.

If a merged asset hospital system wishes to establish an obstetric service at a member hospital currently without the service, current statute permits merged hospital systems to move obstetric beds from within its system, as a non-specialized acute care service, if the action is not inconsistent with the State Health Plan, and meets the other statutory tests for CON exemption to permit a change in type or scope of services between two members of a merged asset hospital system.¹ Changing the State Health Plan to remove the threshold need requirement will make it possible for the Commission to make such a finding. In addition, since it is the jurisdiction-based projection in the current State Health Plan that precludes increasing or decreasing capacity in basic acute care services between system members in different jurisdictions, this plan change would permit systems to seek CON exemption to reconfigure their existing capacity. For hospitals not members of a merged asset system, to establish a new obstetric service would require full CON review. In such a review, existing CON review criteria require an applicant to explicitly analyze and document the impact its proposed program would have on existing obstetric service providers, in such areas as the ability to recruit and retain nurses and other key staff, continued access to services by high-risk and indigent mothers, and viability of the existing programs. Due process provisions in existing CON rules mean that the affected facilities would participate in the review as

¹At Health-General Article §19-123(j)(2)(iv), Annotated Code of Maryland.

interested parties, who can take judicial appeal if aggrieved by the Commission's decision. Changes to the State Health Plan, needed to guide the review of a proposal on either the exemption or the full CON level, will be developed with public participation, and will factor in all of the challenges and considerations facing hospitals, and the hospital system, in Maryland.

Cardiac Surgery and Therapeutic Catheterization Services

Recommendation 2.0

The Commission should continue its regulatory oversight of open heart surgery services through the Certificate of Need program.

Recommendation 2.1

The Commission should establish an Advisory Committee on Outcome Assessment in Cardiovascular Care.

Recommendation 2.2

The Commission should use a well-designed research project to investigate cardiac surgical support for specific groups of patients receiving elective angioplasty.

Recommendation 2.3

The Commission will continue to coordinate its planning and regulatory activities with other entities for the purpose of promoting affordable, accessible, high quality

care for all residents of the state. The Maryland Health Care Commission and Health Services Cost Review Commission should monitor changes in market demand and referral patterns as a result of new or expanded open heart surgery services that may affect Maryland's Medicare waiver.

Recommendation 2.4

The Commission should have the authority to revoke its certification if an operating service fails to meet the standards adopted by the Commission. The Commission should conduct a study before seeking the required statutory change.

The Commission recommends that the General Assembly maintain existing Certificate of Need regulation for cardiac surgery services. The Certificate of Need program protects against the establishment of cardiac surgery programs with low volumes and ensures that highly specialized resources and personnel are allocated to appropriately meet community needs. Evidence of an inverse relationship between volume and quality presents a compelling reason for the State to promote high volume cardiac surgery and therapeutic catheterization programs. To review available models of measuring outcomes, develop an agenda on researching the organization of services to improve outcomes, and develop recommendations for an on-going process to assess outcomes of cardiovascular care, the Commission recommends the establishment of an Advisory Committee on Outcome

Assessment in Cardiovascular Care.² As a component of the Advisory Committee on Outcome Assessment in Cardiovascular Care, the Commission should work to develop a well-designed research project to investigate cardiac surgical support for specific group of patients receiving elective angioplasty. The limited exemption for primary angioplasty performed in hospitals participating in the on-going C-PORT project should be continued. The Commission also believes that providing financial and geographic access to quality health care services at a reasonable cost for all residents of Maryland will require the efforts of multiple organizations and individuals.

When applying for a CON, an applicant makes a representation to the Commission that the service will meet certain standards when it becomes operational. If a service fails to meet the standards, the service should be given a period of time to remedy the failure. If the noncompliance continues after the period for remedy, the Commission should have the ability to withdraw its certification and the authority to operate the service. Before seeking the necessary change in its statute, the Commission should examine the effectiveness of existing monitoring systems, assess the extent of noncompliance, review past remedial action or enforcement of sanctions, and address other issues, such as shared responsibilities and workload. This study should begin after completion of the current two-year study of the Certificate of Need program and include

all services covered by the Certificate of Need program.

Home Health Agency Services

Recommendation 3.0

The Commission should continue its regulatory oversight of home health agencies through the Certificate of Need program.

Recommendation 3.1

The Commission will support efforts to reorganize the current statutory framework for licensure of home-based health care services to provide consistent and improved oversight for both home health agencies and residential service agencies.

Recommendation 3.2

The Commission will monitor the effectiveness of Certificate of Need oversight for home health agencies in light of the changing environment and periodically assess whether Certificate of Need regulation is still needed.

The Commission recommends that the General Assembly maintain existing Certificate of Need regulation for new or expanded home health agency services. Analysis of the public comments received in the process of conducting this study indicate no clear consensus on the future role of the Certificate of Need program in oversight of market entry for home health agencies. While implementation of the new Medicare prospective payment system for home health

² The updated State Health Plan chapter on Cardiac Surgery and Therapeutic Catheterization Services also provides for the creation of this Advisory Committee, at COMAR 10.24.17B, Policy 2.0.

agencies appears on the one hand to have moderated incentives contributing to growth in the supply of agencies, on the other hand, it could be argued that the full impact of this new payment system remains to be evaluated. Another uncertainty considered by the Commission concerns both the final scope and timetable for reorganizing the licensure structure for home-based health agencies. A bill designed to create a community-based health agency licensure category was considered but did not pass during the 1999 session of the General Assembly.³ Given these factors, the Commission believes that it would be appropriate to continue oversight of market entry for home health agencies under the Certificate of Need program. While the future of government oversight for home health services should focus on on-going outcome assessment and quality improvement, the Commission recognizes that it is critical to have the appropriate infrastructure in place to enable this change in policy direction. The recommendation states the commitment of the Commission to support efforts to develop the necessary infrastructure. This recommendation also provides an opportunity for the Commission to evaluate the impact of changes in the Medicare prospective payment system on access, quality, and cost of home health care prior to considering a change in the regulation of market entry.⁴

³ Senate Bill 359 proposed to repeal licensure statute relating to both home health agencies and residential services, replacing these categories with the “community based health agency” designation.

⁴ These significant reimbursement changes, fully effective on October 1, 2000 after a transitional period, are discussed in detail in Chapter 4, pages 89-93.

Hospice Services

Recommendation 4.0

The Commission should continue its regulatory oversight of hospice services through the Certificate of Need program.

The Commission recommends that the General Assembly maintain existing Certificate of Need regulation for new or expanded hospice services. Among the majority of hospice providers as well as the statewide professional association, a strong consensus exists that it would be preferable to continue oversight of market entry through the CON program. Analysis of utilization data indicates that available hospice services are meeting the needs for end-of-life care in Maryland. Retaining the authority to consider new hospice providers only when additional need warrants will help maintain the stability of this mission-driven, largely non-profit provider network that is heavily dependent on volunteers and community donations. Approval of this recommendation would not preclude the Commission from working with the Department's Office of Health Care Quality to strengthen State licensure requirements for hospice care.

Nursing Home Services

Recommendation 5.0

The Commission should continue its regulatory oversight of nursing home services through the Certificate of Need program.

The Commission recommends that the General Assembly maintain existing Certificate of Need regulation for nursing home services. Most of the organizations participating in this study of potential changes to Certificate of Need regulation of nursing home beds and facilities strongly supported the continuation of the existing program. The consensus among those supporting Certificate of Need review for nursing homes is that this regulatory tool represents a comprehensive approach to ensure quality of care, slower capacity growth, higher average occupancy, and more efficiently operated facilities. The Commission believes that the Certificate of Need program has benefited the residents of Maryland by protecting against overbuilding of long term care facilities, protecting the Medicaid budget, and ensuring that sufficient but not excessive resources are available to meet community needs.

The Commission agrees with the consensus among the organizations participating in this study that it should continue to re-evaluate the Certificate of Need program—its procedural rules and incentives, as well as the State Health Plan policies and goals it implements through project review and approval—as the health care system continues to evolve, and as the population ages. The Commission believes that the update of the State Health Plan chapter

addressing nursing home services—which is proceeding on a separate but parallel track to this evaluation of the Certificate of Need program⁵—will provide the opportunity and the appropriate forum to consider important public policy issues raised by the industry and its representatives, including access by Medicaid residents, quality of care concerns, and the criteria and standards for reviewing proposals to renovate and replace existing nursing facilities.

⁵ The Plan update began in July 2000 with the Commission's publication of an environmental assessment of the nursing home industry, followed in August 2000 by a detailed *Long Term Care Chartbook*. An upcoming working paper on nursing home policy issues, followed by a new Long Term Care Facilities and Services Plan to be published this spring, will complete this process.

